Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 47612/LTR/G319	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature_____ Typed or printed name _____	Application Number 10/027,700	Filed 12/20/01
	First Named Inventor Mark Skiba et al.	
	Art Unit 2186	Examiner Tuan V. Thai

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

A prior request was filed on July 7, 2005, before the new pre-appeal brief procedure was announced. Please substitute this request for the prior request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
  See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
  (Form PTO/SB/96)

☒ attorney or agent of record.   20,356
  Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

  Registration number if acting under 37 CFR 1.34 _____

Signature

LeRoy T. Rahn
Typed or printed name

(626) 795-9900
Telephone number

8/16/05
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☐ *Total of _____ forms are submitted.

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ARGUMENT FOR PATENTABILITY OF
REJECTED CLAIMS

All the pending claims, namely, claims 9 to 13, were rejected in the Office action mailed April 8, 2005. These claims have been twice rejected.

It is submitted that the issues on this appeal are straightforward and the Examiner's final rejection is clear error that would be reversed on appeal. Accordingly, the pending claims should be allowed now to save the time and expense of an appeal.

Independent claim 9 and dependent claims 10 to 13 stand rejected as anticipated by Uemura et al patent 5,720,026 under 35 USC 102(e). But Uemura et al does not disclose storing a copy of the updated file and storing the differences in such copy <u>each time one of files is updated</u>. (See attached claim 9 with highlighting.)

The conventional timing for file backup is at regular intervals independent of when the files are updated. In contrast, all the claims require that backup be executed each time a file is updated. In other words, backup is performed in real time.

In paragraph 5 of the outstanding Office action, the examiner relies upon two passages in Uemura for his rejection under 35 USC 102(e). Nothing in Uemura including the two passages the examiner relies upon states that backup occurs each time a file is updated. Further, Uemura's statements, although possibly ambiguous, are completely consistent with a timed backup at regular intervals.

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The examiner seems to be arguing that Uemura's teaching of incremental backup anticipates the rejected claims. But, applicant is not relying upon incremental backup for patentability so the examiner's argument is immaterial.

From the forgoing, it is clear that the rejected claims are not anticipated by Uemura under 35 USC 102(e). Accordingly, withdrawal of this rejection and allowance of all the claims are requested.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By _____

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data located on a plurality of physical storage volumes, comprising the steps:

identifying the physical storage locations of a particular logical file of electronic data stored on a plurality of physical storage volumes;

communicating said electronic data storage locations to a computer operating system;

accessing said electronic data physically located on a plurality of storage volumes by said operating system as if the data appeared on a single volume.

9.   (Previously Presented) A method for backing up data stored in files as the data is updated, the method comprising:

updating one of the files;

temporarily storing a copy of the updated file (mirroring);

comparing the copy of the updated file with the file prior to updating;

storing the differences in the copy of the updated file (versioning); and

repeating the foregoing steps each time one of the files is updated.

10.   (Previously Presented) The method of claim 9, additionally comprising restoring one of the files to a previous condition by:

temporarily storing a copy of the current version of the file being restored;

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